1	EDMUND G. BROWN JR., Attorney General of the State of California	
2	JAMES M. LEDAKIS Supervising Deputy Attorney General KATHLEEN B.Y. LAM, State Bar No. 95379 Deputy Attorney General California Department of Justice 110 West "A" Street, Suite 1100	
3		
4		
5	San Diego, CA 92101	
6	P.O. Box 85266 San Diego, CA 92186-5266 Telephone: (619) 645-2091 Facsimile: (619) 645-2061 Attorneys for Complainant	
7		
8		
9		
10	BEFORE THE BOARD OF REGISTERED NURSING	
11	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA	
12	,	
13	In the Matter of the Accusation Against:	ase No. 2008 - 134
14	N	CCUSATION
15	I = -	
16	Registered Nurse License No. 633392	
17	Respondent.	
18		
19	Complainant alleges:	
20	<u>PARTIES</u>	
21	1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation	
22	solely in her official capacity as the Executive Officer of the Board of Registered Nursing	
23	("Board"), Department of Consumer Affairs.	
24	2. On or about February 27, 2004, the Board of Registered Nursing issued	
25	Registered Nurse License Number 633392 to Leslyann K. Phillips ("Respondent"). The	
26	registered nurse license will expire on March 31, 2008, unless renewed.	
27	///	
28	///	

#### STATUTORY PROVISIONS

- 3. Business and Professions Code ("Code") section 2750 provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with Code section 2750) of the Nursing Practice Act.
- Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.
  - 5. Code section 2761 states in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

- (a) Unprofessional conduct, which includes, but is not limited to, the following:
- Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions.
- Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of blood-borne infectious diseases from licensed or certified nurse to patient, from patient to patient, and from patient to licensed or certified nurse. In administering this subdivision, the board shall consider referencing the standards. regulations, and guidelines of the State Department of Health Services developed pursuant to Section 1250.11 of the Health and Safety Code and the standards. guidelines, and regulations pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300), Division 5, Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings. As necessary, the board shall consult with the Medical Board of California, the Board of Podiatric Medicine, the Dental Board of California, and the Board of Vocational Nursing and Psychiatric Technicians. to encourage appropriate consistency in the implementation of this subdivision.

III///

27 ///

28

1

2 3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21 22

23

24

///

25

26

### 

### 

# 

### 

### 

## 

### \_

# 

#### 

### 

### 

### 

### 

### 

#### 

#### 

- 1

///

///

### **REGULATORY PROVISIONS**

6. California Code of Regulations, title 16, section 1442, states:

As used in Section 2761 of the code, "gross negligence" includes an extreme departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent registered nurse. Such an extreme departure means the repeated failure to provide nursing care as required or failure to provide care or to exercise ordinary precaution in a single situation which the nurse knew, or should have known, could have jeopardized the client's health or life.

7. California Code of Regulations, title 16, section 1443, states:

As used in Section 2761 of the code, "incompetence" means the lack of possession of or the failure to exercise that degree of learning, skill, care and experience ordinarily possessed and exercised by a competent registered nurse as described in Section 1443.5.

### **COST RECOVERY**

8. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

#### FACTUAL BACKGROUND

Respondent worked as a registered nurse in the operating room at Scripps Memorial Hospital in La Jolla, California ("Hospital") from approximately July 19, 2004, to August 26, 2006. From on or about July 19, 2004, to May 29, 2005, Respondent worked at the Hospital as a perioperative nursing care coordinator, and from on or about May 29, 2005, to the date of termination, as an assistant manager, patient care. In the course of her duties at the Hospital, Respondent cleaned, and/or instructed others to clean, gastroscopes with an enzymatic solution, rinse them with a sterile solution, and clean the exterior with alcohol. Respondent did not then send, and instructed others not to send, the gastroscopes cleaned thereby to the Hospital's sterile processing department for proper sterilization, as required by the Hospital's established policy and procedure.

### FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

9. Respondent's license is subject to disciplinary action under Code section 2761, subdivision (a)(1), on the grounds of unprofessional conduct, in that while on duty as a registered nurse at the Hospital, she failed to follow established policy and procedure for proper sterilization of gastroscopes, thereby putting patients at risk for contracting blood-borne infectious diseases, such as HIV or hepatitis, thereby committing an act constituting gross negligence within the meaning of California Code of Regulations, title 16, section 1442.

### SECOND CAUSE FOR DISCIPLINE

(Incompetence)

10. Respondent's license is subject to disciplinary action under Code section 2761, subdivision (a)(1), on the grounds of incompetence, in that while on duty as a registered nurse at the Hospital, she failed to follow established policy and procedure for proper sterilization of gastroscopes, thereby putting patients at risk for contracting blood-borne infectious diseases, such as HIV or hepatitis, thereby committing an act constituting incompetence within the meaning of California Code of Regulations, title 16, section 1443.

#### THIRD CAUSE FOR DISCIPLINE

(Failure to Follow Infection Control Guidelines)

11. Respondent's license is subject to disciplinary action under Code section 2761, subdivision (k), in that while on duty as a registered nurse at the Hospital, Respondent failed to follow established policy and procedure for proper sterilization of gastroscopes, thereby knowingly exposing patients to the transmission of blood-borne infectious diseases, such as HTV and hepatitis.

|| ///

| | ///

26 | ///

27 | ///

28 ///

### **PRAYER** 1 2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision: 3 Revoking or suspending Registered Nurse License Number 633392, issued 4 1. 5 to Leslyann K. Phillips; Ordering Leslyann K. Phillips to pay the Board of Registered Nursing the 6 reasonable costs of the investigation and enforcement of this case, pursuant to Code section 7 8 125.3; and, 9 Taking such other and further action as deemed necessary and proper. 3. DATED: 10/18/07 10 11 12 13 **Executive Officer** Board of Registered Nursing 14 Department of Consumer Affairs 15 State of California Complainant 16 03979110-SD2007801603 80160071.wpd 17 bfc 8/3/07 18 19 20 21 22 23 24 25

26

27

28